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120 Years of Chinese Administrative Law – Between Tradition and Rejuvenation

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Sandra Michelle Röseler

120 Years of Chinese Administrative Law – Between Tradition and Rejuvenation*

Wang Guisong's 王贵松 *Theoretical History of Chinese Administrative Law* is a remarkable contribution to a still emerging field of legal historical studies on Chinese administrative law and its legal science. It represents the first attempt to provide a nuanced account of the rich, 120-year disciplinary and intellectual history of Chinese administrative law.

The author is a renowned professor at the Renmin University of China Law School. During his studies, Wang was supervised by Jiang Ming'an 姜明安, one of the key figures of administrative law development since the 1980s until today. Wang is fluent in Japanese, has completed two extended research stays at Kyoto University and the University of Tokyo, and translated substantial Japanese scholarship on administrative law – including monographs on constituent power, administrative factual acts and administrative litigation, general theory of administrative law, as well as subjective law and legal relationships in administration. Wang's personal engagement with the Japanese administrative law knowledge system and its historical trajectories forms a crucial basis for the nuanced analysis of the translation practices employed by late Qing dynasty scholars he presents in his monograph. As the earliest scholarship on administrative law resulted from a complex process of cultural translation of Japanese legal knowledge and Western legal knowledge (mediated through Japan) into Chinese contexts, Wang's work impresses the reader through detailed recontextualizations of primary scholarship from both China and Japan. Wang's historical research on the grounds and reappraisal of sources includes *inter alia* processes of localization in Republican-era China, the introduction of Soviet-style administrative law in education and research, as well as the translation of foreign administrative law knowledge throughout all stages of Chinese administrative law development.

The monograph is divided in two main parts. The first part (chapters 1 and 2) comprises a general history of Chinese administrative law as an academic field of study since the modern era in the late Qing dynasty. Wang narrates this development history through four main stages: Chapter 1 (»The history of Chinese administrative law science in the modern era«; *English translations by S. M. R.*) includes the »reception« of the concept of administrative law, administrative law education and translation practices in the late Qing Dynasty (9–29) as well as their following formation and development in the Republican-era China (29–73). In chapter 2 (»the history of Chinese administrative law science in the contemporary era«), Wang pictures the transition and decline of the field in the immediate aftermath of the founding of the People's Republic of China (74–89), followed by the re-establishment of the discipline after the introduction of Deng Xiaoping's reform and opening-up policy (89–132).

The second part of the monograph (chapters 3–7) places the focus on legal theoretical concepts, divided in five chapters and twenty sections. Wang tracks the changes in the basic principles of administrative law (chapter 3), including changes in (i) the concept of administrative law, (ii) the theory of public law, (iii) the theory of administrative subjects, (iv) the theory of public rights, (v) principles of administration according to rule of law, and (vi) in the concept of administrative discretion *(Ermessen)*; chapter 4 then analyses the »changes in the theory of acting forms of administration« *(Handlungsformenlehre)*, including the theories of (i) administrative legislation, (ii) administrative action, and (iii) administrative contracts. Turning to chapter 5, Wang observes shifts within

* 王贵松 [Wang Guisong], 中国行政法学说史 [Theoretical History of Chinese Administrative Law], Beijing: 中国人民大学出版社 [China Renmin University Press] 2023, 534 p., ISBN 978-7-30032137-0

the theoretical construction of the »ordinary Chinese administrative system«. The chapter includes sections on the legal theoretical genesis of (i) administrative procedure, (ii) licensing, (iii) coercive enforcement, (iv) coercive measures, and (v) punishment. Chapter 6 portrays changes in the theory of administrative remedies looking at (i) administrative objection, (ii) administrative litigation, (iii) state compensation, and (iv) administrative indemnification. Wang concludes this rich theoretical-historical *tour d'horizon* with a survey of »the history of the research on single parts of administrative law« (chapter 7), a conclusion, and an afterword. Finally, a »bibliography of modern writings of administrative law science« and an index of names – guiding readers interested in particular actors – further adds to the richness of the monograph's analysis.

Wang's work can be considered a significant contribution to the historical study of Chinese administrative law, its legal science, intellectual genealogies, and theoretical evolution. The scholarship discussed in Wang's monograph presents a carefully selected body of works intended to map the field across its different historical stages, with a particular focus on major works distinguished by their clear line of argumentation (7). While Chinese scholarship on administrative law has been growing and diversifying considerably since at least the early 2000s, Wang's monograph does not aim to present a complete historiography of the field, nor an exhaustive historical treatise on the 120-year evolution of Chinese administrative law scholarship. This is also the reason why he decided not to include most recent debates, including topics such as information disclosure, administrative investigations, administrative planning, data protection, and administrative guidance. Wang instead guides the reader to the more enduring discourses, mapping the path-dependencies that are shaping today's self-perception of the field (»the older [the material] the more detailed [the survey], the younger the briefer«). Take, for instance, Wang's deconstruction of the »Sinicization« process of Chinese administrative law in Republican-era China, presented in chapter 1. Here, the introduction of the pioneering scholar Zhong Gengyan 钟赓言 (39–43), helps to re-contextualize and to deconstruct the unique patterns of Chinese administrative law and its independent stance within a global community of administrative law systems, while also picturing the »inherited« (7) characteristics of contemporary administrative law science. In this respect, Wang's monograph also aligns with the agenda of the book series *Development History of Chinese Legal Studies* in which the monograph is published: The growing emphasis on Chinese subjective consciousness (中国主体意识) in legal studies highlighted the need to trace the early pioneering thinkers who recontextualized newly learned Western legal experience into Chinese contexts, while preserving Chinese tradition (preface, 4).

While the monograph provides a comprehensive account of doctrinal history, one caveat might be the separation of the general disciplinary history and historiography from the history of thematic concepts. Apart from a certain sense of redundancy and synthetic separation (as Wang himself acknowledges, 7), this may limit a more integrated picture of the intellectual discourses of Chinese administrative law as an academic discipline. Here, a knowledge-historical study of how Chinese administrative law as a legal discipline has emerged over the past 120 years could help broaden the scope of observation. This would particularly benefit the analysis of multiple arrangements of discourses, practices, rules, norms, principles, and institutions at the intersection of legal theory, political ideology, and legal practice. For instance, such a knowledge-historical approach, as proposed by Thomas Duve, could build on the entanglements identified by Wang in chapter 1 to further explore translation and localization practices related to the regulation of administrative power during the late Qing and Republican-era periods. It likewise may reveal how the re-formation of these theoretical concepts in Reform-era China contributed to the administrative legislation activities initiated in the late 1980s. Ultimately, such historical knowledge on the discipline's genesis may also support the ongoing endeavor to draft a comprehensive administrative law code. In this process, knowledge on the doctrinal history of administrative law could enrich the legislators' understanding and help to create new normative knowledge relevant to the enhanced systematization of the material body of administrative law.

For a more case-based engagement with the individual theoretical concepts presented in Wang's monograph, readers may also want to refer to his article »The Rebirth of Administrative Law in China« (中国行政法学的涅槃重生, in: 法治社会 [Law-Based Society] 6 [2023], 92–106).

Here, Wang specifically focuses on the restoration of administrative legal education and research after reform and opening-up. It serves as an example of how Wang's approach is applied to a specific historical juncture, demonstrating his method of tracing the theoretical formation of administrative law through a focused examination of a particular developmental stage. In doing so, the article reflects Wang's broader intellectual agenda of laying the groundwork for continued research on the theoretical history of administrative law as a distinct field of legal research and education.

To conclude, Wang's monograph makes a core contribution to the field of Chinese administrative law history and should be made accessible beyond a Chinese-speaking audience. It provides a valuable tool to researchers of any rank as well as for legal practice. Since the development of administrative law science in China inherited a tradition of cultural translation cycles from Western jurisdictions to Japan and to China, the local production of administrative law knowledge across different historical periods and epistemic communities clearly transcended national contexts. Therefore, Wang's monograph also provides many avenues to explore the emergence of Chinese administrative law through the lens of global legal history.

■

Leonardo Ravaioli

Back to the Origins of Modern Jurisprudence*

Last year, a new edition of Pietro Costa's *Il progetto giuridico. Ricerche sulla giurisprudenza del liberalismo classico* made this masterpiece available again, exactly fifty years after it was first published. *Il progetto giuridico* is probably one of the most brilliant and original results of the prestigious Florentine school of legal history for the way it combines a rigorous scientific method and *(avant la lettre)* truly interdisciplinary research.

It is important to stress from the outset that although the book is probably one of the most important studies in the history of modern legal and political thought of recent decades, it can hardly be considered a *classic* text in Italian scholarship. Not because, as the author all too modestly puts it in the interview included in the appendix of this new edition, the book has been »relegated to the margins of legal and legal-philosophical historiography« (405) – which for many of us it has not been – but rather because of its continuing ability to challenge the traditional canons and boundaries of academic disciplines. In fact, *Il progetto giuridico* is much more than a successful example of the eclecticism of the ›long '68‹, when a young generation of scholars in the humanities rebelled against the still dominant idealism of Benedetto Croce and drew inspiration from new trends of studies, namely sociology, Freudo-Marxism and linguistic structuralism. Through a new reading of the classical thinkers of English liberalism of the 17th and 18th centuries, Costa actually provided an alternative account of the origins of liberal thought. He interpreted it not through the usual lenses of the processes of secularisation or as the affirmation of individualist ethics, but by analysing the process of the resemantisation of traditional legal concepts undertaken by modern jurisprudence. In fact, some specific legal concepts were at the centre of a new intellectual endeavour that aimed both to understand the ongoing social and

* Pietro Costa, Il progetto giuridico. Ricerche sulla giurisprudenza del liberalismo, ed. by Filippo Del Lucchese, Marco Fioravanti, Bologna: DeriveApprodi 2024, 420 p., ISBN 978-8-865-48510-1; all English translations of quotations are the author's